

In the Matter of)
)
County of El Paso, Colorado) Call Sign WPTQ260
)
Petition for Reconsideration)

connectivity issues and requested an extension of time until July 15, 2019 to construct Location 6.⁷ El Paso later advised the staff of the Public Safety and Homeland Security Bureau (Bureau) that Location 6 was constructed and operational as of August 1, 2019.⁸

III. DISCUSSION

4. *Location 6.* Requests for construction extension must be filed before the construction deadline.⁹ El Paso's construction deadline for Location 6 was April 10, 2019 but its extension request was not filed until June 19, 2019 – 70 days after the construction deadline. The reasons El Paso advances for its failure to timely construct Location 6 are irrelevant as our rules and precedent establish that a license will be placed in Terminated status in the Commission's Universal Licensing System under these circumstances.¹⁰ Therefore, we deny El Paso's Petition with respect to Location 6 and dismiss its request for an extension. If El Paso desires to continue to operate on the frequencies previously authorized for Location 6 under call sign WPTQ260, it must file a properly coordinated application for license. If El Paso desires to operate while the referenced application for license is pending before the Commission, it must file a request for special temporary authority pursuant to section 1.931 of the Commission's rules.¹¹

5. *Locations 3 and 4.* El Paso admits that it did not file a timely Notice of Construction for Locations 3 and 4 but contends that the two sites were constructed and activated before the construction deadline. The Commission has clarified that the objective of the construction notification procedure is to verify whether licensees have in fact met their construction and coverage obligations, not to terminate licenses that are legitimately operating facilities because of a failure to notify of construction.¹² Although El Paso provides no reason for failing to timely file its Notice of Construction for these locations, we recognize those facilities were legitimately in operation prior to the construction deadline.¹³ We perceive no overriding policy rationale, *e.g.*, avoidance of spectrum warehousing,¹⁴ that prevents us from granting El Paso's Petition as it relates to Locations 3 and 4 and note that their operations were in the furtherance of the protection of life and property. That said, however, we do not diminish the importance of timely filing a Notice of Construction and admonish El Paso for its failure to do so.

⁷ *Id.*

⁸ E-mail from Ed Bretag, County of El Paso, to Tracy Simmons, Federal Communications Commission, Sept. 24, 2019 (stating "Site 6, which was the site I asked for an extension for, has been constructed and on the air since August 1st, 2019").

⁹ 47 CFR § 1.946 requires, in pertinent part, that "[t]he request [for extension of time to construct] must be filed before the expiration of the construction or coverage period."

¹⁰ 47 CFR § 1.946; *See, e.g., Orange County, New York*, Order, 33 FCC Rcd 11200 (PSHSB 2018) (Petition for reconsideration denied when, as here, licensee failed to construct by the deadline and requested an extension of time to construct after the deadline had passed.)

¹¹ 47 CFR § 1.931.

¹² *Biennial Regulatory Review — Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95 and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Report and Order, 13 FCC Rcd 21027, 21076 para. 106 (1998) (*Biennial Regulatory Review*) (explaining that the rule providing for automatic license termination is not based on a licensee's failure to file a construction notification, "but based on actual failure by the licensee to meet its construction or coverage deadline.").

¹³ *See* Petition ("[a]ll of our changes have been made to ULS Loc. 3 and 4, those frequencies are in use").

¹⁴ *See State of New York*, Order, 27 FCC Rcd. 14912, 14913 para. 4 (PSHSB 2012), *citing Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations*, Notice of Proposed Rule Making, 5 FCC Rcd 6401 (1990).

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, that, pursuant to the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, the Petition for Reconsideration filed by the County of El Paso, Colorado on May 21, 2019 IS GRANTED IN PART as described herein, and DENIED in all other respects.

7. IT IS FURTHER ORDERED that, pursuant to the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, the request for extension of time to construct Location 6. included as part of the Supplement filed by the County of El Paso, Colorado on June 19, 2019, IS DISMISSED AS MOOT.

8. IT IS FURTHER ORDERED, that the Licensing Branch of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau SHALL DESIGNATE Location 6 in license, call sign WPTQ260, AS TERMINATED in the Commission's Universal Licensing System database.

9. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's Rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm, Chief
Policy and Licensing Division
Public Safety and Homeland Security Bureau